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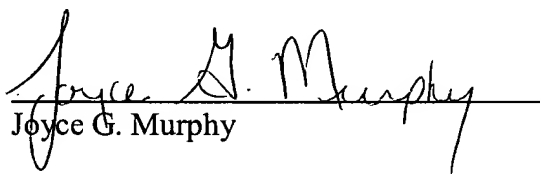
Applicant: Cote, Armand
Serial No.: 09/140,049
Filed: August 26, 1998
For: Breakaway Utility Pole

Paper No.:
Examiner: Glessner, B.
Group No.: 3635
Docket No.: COTE/971/US

To the Commissioner of Patents and Trademarks
Washington, DC 20231

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner of Patents and Trademarks, Washington, DC 20231, on December 18, 2001.


Joyce G. Murphy

Appeal Brief

This is applicant's appeal brief in the subject application.

Real Party in Interest

The real party in interest is the applicant, Armand Cote.

Related Appeals and Interferences

None.

Status of Claims

Claims 4-8 and 11-14 are pending.

Status of Amendments

No amendments were filed after the final rejection.

Summary of Invention

The invention relates to a plastic breakaway utility pole. The pole comprises a solid, plastic lower member embedded in the ground and having a connector at its top, protruding from the ground, an intermediate hollow, plastic generally cylindrical member interfitted into the lower member connector and protruding up, and having a connector at its top, and a solid plastic top member interfitted into the intermediate member connector, and having means for carrying utility wires. The intermediate member is a hollow plastic tube which fractures upon a relatively low impact from an automobile. The result is a pole that is less harmful to passengers and motor vehicles, and that can be easily repaired after an impact by replacing only the intermediate member.

Issues

The following issues are presented for review:

1. Whether the declaration is defective.
2. Whether claims 4-8, 11 and 13 would have been obvious in light of the combination of Anderson et al. (5,081,804) and Papin (5,775,035).
3. Whether the combination of Anderson et al. (5,081,804) and Papin (5,775,035) as combined by the examiner to reject claims 4-8, 11 and 13, is proper.
4. Whether claim 12 would have been obvious in light of the combination of Anderson et al. (5,081,804) and Papin (5,775,035), and further in view of Baumeister (3,378,967).
5. Whether the combination of Anderson et al. (5,081,804) and Papin (5,775,035) and Baumeister (3,378,967) as combined by the examiner to reject claim 12, is proper.
6. Whether claim 14 would have been obvious in light of the combination of Anderson et al. (5,081,804) and Papin (5,775,035), and further in view of Svenson (4,738,058).

7. Whether the combination of Anderson et al. (5,081,804) and Papin (5,775,035) and Svenson (4,738,058) as combined by the examiner to reject claim 14, is proper.

Grouping of Claims

There is one group of claims. Claim 13 is the sole independent claim.

Argument

All of the rejections over prior art in the final office section are under 35 U.S.C. 103.

Claim 13 is currently the sole, independent claim, and is patentable in light of the references of record. Andersson discloses a pylon made of a number of interfitting sections, all of which are hollow (column 5, lines 49-50). Papin also discloses a hollow tubular pole. None of the references, individually or in combination, disclose or suggest Claim 13, in which the lower and top members are solid plastic members and the intermediate member is a hollow plastic member, in which the three portions are interconnected. The advantages of the inventive construction are disclosed in the specification, and include the primary object of the invention, which is to provide a utility pole in which the portion that is above ground and at the level of a motor vehicle is relatively weak so that it will break if struck by a motor vehicle with sufficient force. Since this intermediate portion has connectors at each end, a new intermediate portion can replace the broken portion to rebuild the pole without having to dig up the pole from the ground, or touch the wires that are connected to the top portion. The top and bottom portions are solid to provide more strength to hold the pole up and to carry utility wires.

The references in combination do not disclose the construction of claim 13, with solid lower and upper sections and a hollow intermediate section. Even if Andersson is read as disclosing a solid lower member (after it is filled with concrete), there is no suggestion of making the upper portion solid. The Examiner found that it would have been obvious to make Andersson's third pole portions solid because additional strength may be needed. However, this is clearly hindsight reconstruction of the reference, as there is no such disclosure in Andersson, and Andersson already describes a construction for carrying power lines, without having a solid

upper section. Thus, Andersson, with his teaching of a hollow upper section, actually teaches away from a solid upper section. The combination is thus improper.

As to Baumeister and Svenson, it is not seen how either can be combined as set forth by the examiner, as neither adds substantially to the Andersson/Papin combination, which in any case is clearly improper and does not teach the invention.

As to the declaration, we believe that it does properly identify the residence of the inventor and the citizenship of the inventor (see the first line and the last line). If a different form is required for the priority claim, this will be provided.

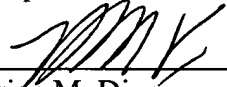
As to the Examiner's suggestion in paragraph 2 of the Office Action regarding adding the words "adapted to" to claim 13, the Applicant is willing to agree to such amendment. Since this was a final Office Action, however, the Applicant has not included the amendment. The Applicant will provide this amendment if the remaining issues are resolved.

Appendix

4. The breakaway utility pole of claim 13 in which said second portion is generally annular in cross-section.
5. The breakaway utility pole of claim 13 in which said lower member includes at its upper end one part of a two-part male/female connector element.
6. The breakaway utility pole of claim 5 in which said intermediate member includes at its lower end the second part of said male/female connector element.
7. The breakaway utility pole of claim 6 in which said intermediate member further includes at its upper end one part of another two-part male/female connector element.
8. The breakaway utility pole of claim 7 in which said top member includes the second part of said another two-part male/female connector element.
11. The breakaway utility pole of claim 13 in which said lower, intermediate and top members are generally cylindrical.
12. The breakaway utility pole of claim 11 further including a pointed member into which said lower member fits.
13. A plastic breakaway utility pole, comprising:
 - a solid, plastic lower member embedded in the ground and having a connector at its top, protruding from the ground;
 - an intermediate hollow, plastic generally cylindrical member interfitted into said lower member connector and protruding up, and having a connector at its top; and
 - a solid plastic top member interfitted into said intermediate member connector, and having means for carrying utility wires;wherein said intermediate member is a hollow plastic tube which fractures upon a relatively low impact from an automobile.

14. The breakaway utility pole of claim 13 in which said intermediate member is internally fluted along its length to weaken it so that it fractures more easily.

Respectfully submitted,



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